

November 18, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AMENDMENT TO AND ASSIGNMENT OF OPTION TO AMEND LEASE
AGREEMENTS AND MODIFICATION OF AMENDED AND RESTATED LEASE
AGREEMENTS – PARCELS 12R (DEAUVILLE MARINA) AND 15U (BAR HARBOR
MARINA) – MARINA DEL REY
(FOURTH DISTRICT)
(4 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Amendment to and Assignment of Option to Amend Lease Agreements and Modification of Amended and Restated Lease Agreements ("Amendment"), attached as Exhibit 1, is categorically exempt under the California Environmental Quality Act pursuant to class 1 (r) and 4 (j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Amendment in order to facilitate redevelopment on Parcels 12R and 15U and: (a) implement joint assignment of the original Option to Amend Lease Agreements ("Option") to two new lessee entities; (b) extend the Option expiration date by 60 days, with provision for an additional 60-day extension at Director discretion; and, (c) modify the Amended and Restated Lease Agreement ("Restated Leases") expiration dates and the joint and several obligation provisions with respect to the completion of construction of the redevelopment on Parcels 12R and 15U, and add provisions for price controls, liquidated damages for maintenance deficiencies and for provision of a water taxi docking area.

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PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On January 4, 2000, your Board authorized the Option and accompanying Restated Leases for Parcels 12R and 15U providing that, upon exercise of the Option, the Restated Leases become effective and provide for redevelopment of both parcels. The Option and Restated Leases call for payment of a \$3.2 million lease extension fee, demolition of the existing 408 apartments and construction of 1,022 new apartments (including very low income senior units, in compliance with the County's Affordable Housing Policy for Marina del Rey), demolition of 717 existing boat slips and construction of 439 new boat slips, construction of a waterfront promenade on each parcel, adjustment of minimum and percentage rents and other miscellaneous improvements.

The two-year term of the Option ("Option Term") commenced January 28, 2000, however, expiration of the exercise date of the Option was tolled, as provided by the terms of the Option, due to commencement of litigation during the Option Term. The final matter of existing litigation was dismissed on August 7, 2003, thus providing the Lessee until December 5, 2003 to exercise the Option. Lessee has obtained all necessary regulatory approvals and has applied for an extension of its Coastal Development Permit (CDP) issued by the California Coastal Commission to accommodate the delay in start of construction caused by intervening legal actions (the last of which was recently dismissed) and is in the process of finalizing complex financing arrangements to comply with the remaining pre-condition necessary to exercise the Option. However, due to the extraordinary period of time that development of the parcels was delayed by litigation, together with the need to now complete detailed financing requirements, an extension of the Option Term is required. In order to provide appropriate time to complete financing arrangements and allow commencement of construction, a 60-day extension of the Option Term is provided, with an additional 60 at the discretion of the Director upon demonstration of Lessee's diligent pursuit of completion of financing.

The Restated Leases call for phased demolition/construction of the Parcel 12R facilities, followed by demolition/construction of the Parcel 15U improvements. While the exercise of the Option provides an extended lease term for both Parcels 12R and 15U, the Restated Leases contain provisions providing that if the Lessee fails to meet its required construction

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start and substantial completion dates for either leasehold, then both leases revert to their original shorter term. This "cross reversion" provision with respect to these geographically separated parcels has made financing unavailable and, thus, provisions have been added providing that the extended lease term granted to Parcel 12R will, upon demonstration of completion of all project construction and the attainment of occupancy permits for the Parcel 12R project, become final and no longer subject to reversion to its original shorter term in the event that Parcel 15U construction does not meet its required construction start or substantial completion date requirements. However, if the Parcel 12R project does not meet its required construction start or substantial completion dates, the leases of both Parcels 12R and 15U will revert to their original pre-extension terms and the benefits of the Restated Leases will be lost to both. Additionally, failure of the Parcel 15U project to meet its deadlines for commencement and substantial completion of construction will cause the term of the Parcel 15U Restated Lease to revert to its original shorter term. All terms relating to the payment of the full \$3.2 million extension fee, however, remain the full joint and several obligation of both leaseholds throughout the terms of each lease, once the Option is exercised, except no further extension fee payments are due if both of the leases are shortened to the original term.

Additionally provided are a number of new modernized lease provisions and a correction of the lease expiration dates. Pursuant to the County's lease extension policy, an extension of 39 years to the initial 60-year lease term is provided for leaseholds that completely demolish and rebuild new and improved facilities. The original draft Restated Leases inadvertently measured the additional lease terms from lease execution dates rather than lease term commencement dates and are, thus, now corrected to provide the intended 39-year extensions measured from commencement of earliest lease term (August 1, 1962 – Parcel 15U) and co-terminus expiration of both Restated Leases to July 31, 2061 – an addition of 13 months.

Additional inserted provisions to each Restated Lease include a) controlled prices for apartments, boat slips and other services provided by the Lessee to assure that Lessee services and facilities are provided to the public at fair market rates; b) liquidated damages of \$100 (adjusted triennially for inflation) per day, per maintenance deficiency for each day any cited maintenance deficiency remains uncorrected after expiration of time provided to

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repair such deficiency – such amounts to be assessable against security deposits held by the County which are required to be replenished by Lessee; and, c) provision, at no cost to the County, of docking space for water taxi operations at the Parcel 12R docks at a location adjacent to the main channel - such docking space to be compliant with the requirements of the Americans with Disabilities Act (ADA).

Implementation of Strategic Plan Goals

In furtherance of County Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward both revenue maximization and property redevelopment. This recommendation is consistent with the County's Strategic Plan Goal of Service Excellence, in that while maintaining appropriate protection of County interests, it allows for and facilitates the financing and construction of new improvements on the leaseholds.

FISCAL IMPACT/FINANCING

There is no current financial impact to the County as a result of the Amendment. Your Board previously, on January 4, 2000, authorized the Option and the Board letter accompanying our request, which set forth the significant benefits to the County to be derived from the completed projects, including a \$3.2 million extension fee and additional County rent upon completion of the projects of approximately \$3,365,000 annually.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the lease for Parcel 12R commenced on January 1, 1963 and the term of the lease for Parcel 15U commenced on August 1, 1962. Your Board granted the Option for both parcels on January 4, 2000. The Amendment (attached as Exhibit 1) provides for changes to both the Option and the Restated Leases. A summary of these changes is as follows:

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Assignment of Option: An assignment of the Parcel 12R and 15U leases from Marina Two Holding Partnership (MTHP), the Lessee as described in the original Option, to Esprit One, LLC (Esprit One) and Esprit Two, LLC (Esprit Two), new lessee entities for these leaseholds, was approved by your Board on November 4, 2003. With the attached Amendment, MTHP also assigns its interests under the Option to Esprit One and Two.

Lease Modifications: The expiration dates of each of the Restated Leases will be corrected to July 31, 2061, to provide the intended full 39-year lease extension for each lease. In addition, the Restated Leases call for phased demolition/construction of Parcel 12R facilities, followed by demolition/construction of the Parcel 15U improvements. While the exercise of the Option provides an extended lease term to both Parcels 12R and 15U, the Restated Leases currently contain provisions providing that if either fails to meet its required construction start and substantial completion dates, then both leases revert to their original shorter term. In order to enable financing that has, to date, proven unavailable, the cross-reversion provisions are being modified to provide that the extended lease term granted to Parcel 12R will, upon demonstration of completion of all project construction and attainment of occupancy permits for the Parcel 12R project, become final and will no longer be subject to reversion to its original shorter term in the event that Parcel 15U construction does not meet its required construction start or substantial completion date requirements. However, if the Parcel 12R project does not meet its required construction start or substantial completion dates, the leases for both Parcels 12R and 15U will revert to their original pre-extension terms and the benefits of the new Restated Leases will be lost to both. Additionally, failure of the Parcel 15U project to meet its deadlines for commencement and substantial completion of construction will, in all events, cause the term of the Parcel 15U Restated Lease to revert to its original shorter term. All terms relating to the payment of the full \$3.2 million extension fee, however, remain the full joint and several obligation of both leaseholds throughout the terms of each lease once the Option is exercised, except no further extension fee payments are due if both leases are shortened to the original term.

Extension of Option Expiration Date: Due to the extraordinary length of time the parcels were affected by litigation and to allow appropriate time to finalize financing for the Parcel 12R project, a 60-day extension of the Option term, with an additional 60 days at the

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discretion of the Director upon demonstration of the Lessee entities' diligent pursuit of completion of financing, has been provided.

Additional Restated Lease Terms: Several new provisions will be added to the existing Restated Leases as follows: a) a "Controlled Prices" provision relating to prices charged for apartments, boat slips and other services provided by the Lessee to assure that Lessee services and facilities are provided to the public at fair market rates; b) a new provision for payment to the County of liquidated damages of \$100 per day (adjusted triennially for inflation), per maintenance deficiency for each day any cited maintenance deficiency remains uncorrected after expiration of the time provided to repair such deficiency – such amounts to be assessable against security deposits held by the County which are then required to be replenished by Lessee; and, c) a new lease requirement that the Lessee provide, at no cost to the County, docking space for County water taxi operations at the Parcel 12R docks at a location adjacent to the main Marina channel for a vessel up to 50' in length, such docking space to be compliant with the requirements of the Americans with Disabilities Act (ADA).

The Lessee received approval from the Department of Regional Planning for its discretionary land use entitlements under the applicable standards of the Local Coastal Program (LCP), including those related to building height and traffic requirements, on December 6, 2000. The California Coastal Commission issued a Coastal Development Permit (CDP) on October 9, 2001 for the waterside portion of the project, and Lessee has applied for an extension of its CDP to accommodate the delay in start of construction caused by intervening legal actions (the last of which was recently dismissed).

Amendment and extension of the existing leases is authorized by Government Code Sections 25907 and 25536. The extended lease terms are in conformance with the maximum 99-year period authorized by California law.

As contemplated by your Board's Affordable Housing Policy for Marina del Rey, the Parcels 12R and 15U facilities each include 10% senior very low income housing units for the full remaining term of the Restated Leases.

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The Small Craft Harbor Commission at its meeting on the 12th day of November 2003 unanimously endorsed the Director's recommendation to approve and execute the Amendment. The Amendment has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The Amendment is categorically exempt under the California Environmental Quality Act pursuant to class 1 (r) and 4 (j) of the County's Environmental Document Reporting Procedures and Guidelines. Approval of the Amendment does not authorize construction or re-construction of any improvements. The Lessee received its approval from the Department of Regional Planning for its discretionary land use entitlements under the applicable standards of the Local Coastal Program (LCP), including those related to building height and traffic requirements on December 6, 2000, and the California Coastal Commission issued a CDP on October 9, 2001 for the waterside portion of the project. The Lessee has also applied for an extension of its CDP to accommodate the delay in start of construction caused by intervening legal actions (the last of which was recently dismissed).

CONTRACTING PROCESS

The Lessee's proposal as to Parcels 12R and 15U for a lease extension was received in response to the release of a Board-authorized solicitation document seeking proposals for new development and redevelopment of parcels on the Westside of Marina del Rey. Subsequent negotiations with the Lessee resulted in the Option, which was approved by your Board on January 4, 2000.

The Restated Leases will be available to the Lessee upon the exercise of the Option. The proposed Amendment will allow additional time for Lessee to demonstrate that it has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project, including, especially, demonstration of availability of necessary project financing. Upon exercise of the Option, we will return to your Board for final confirmation that the conditions and

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approvals for exercise contained in the Option have been satisfied and request authorization for execution of the Restated Leases.

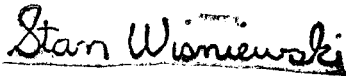
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send three copies of the executed Amendment to the Department of Beaches and Harbors.

Respectfully submitted,



Stan Wisniewski, Director

SW:RM:AK

Attachments (1)

c: Chief Administrative Officer
Executive Officer, Board of Supervisors
County Counsel

**AMENDMENT TO AND ASSIGNMENT OF
OPTION TO AMEND LEASE AGREEMENTS
(PARCELS 12R AND 15U)**

This AMENDMENT TO AND ASSIGNMENT OF OPTION TO AMEND LEASE AGREEMENTS ("Amendment") is made and entered into as of November __, 2003, by and between the COUNTY OF LOS ANGELES ("County"), MARINA TWO HOLDING PARTNERSHIP, a California limited partnership ("Former Lessee"), ESPRIT ONE LLC, a California limited liability company ("Esprit One"), and ESPRIT TWO LLC, a California limited liability company ("Esprit Two", and collectively with Esprit One the "New Lessees").

RECITALS

A. County and Deauville Marina Development Co. Ltd., a predecessor-in-interest to Former Lessee, entered into Lease No. 6416 dated December 21, 1962, as amended (the "Existing Parcel 12 Lease") concerning the lease by County as lessor of certain real property in the Marina del Rey Small Craft Harbor now commonly referred to as Parcel No. 12R (the "Parcel 12 Premises").

B. County and Bar Harbor Development Co. Ltd., a predecessor-in-interest to Former Lessee, entered into Lease No. 6126 dated September 21, 1962, as amended (the "Existing Parcel 15 Lease") concerning the lease by County as lessor of certain real property in the Marina del Rey Small Craft Harbor now commonly referred to as Parcel No. 15U (the "Parcel 15 Premises").

C. The Existing Parcel 12 Lease and the Existing Parcel 15 Lease are collectively referred to herein as the "Existing Leases."

D. The term of the Existing Parcel 12 Lease is currently scheduled to expire on December 31, 2022. The term of the Existing Parcel 15 Lease is currently scheduled to expire on July 31, 2022.

E. County and Former Lessee entered into that certain Option to Amend Lease Agreements (Option No. 72582) dated January 28, 2000 (the "Option Agreement") pursuant to which County granted to Former Lessee an option to extend the term of both of the Existing Leases through June 30, 2060 in accordance with the terms of the Restated Leases described in the Option Agreement.

F. Subsequent to the date of the Option Agreement Former Lessee has assigned its interest in the Existing Parcel 12 Lease to Esprit One and has assigned its interest in the Existing Parcel 15 Lease to Esprit Two. In connection with such assignments, Douglas R. Ring, an individual, and Douglas R. Ring and Cynthia A. Miscikowski, as Trustees of the Ring-Miscikowski Trust (collectively, the "Guarantors"), have guaranteed the obligations of Esprit One and Esprit Two under the Existing Leases.

G. Former Lessee desires to assign its interest in the Option Agreement jointly to Esprit One and Esprit Two, Esprit One and Esprit Two desire to jointly obtain and accept such assignment, and County is willing to consent to such assignment, subject to the terms and conditions set forth in this Amendment.

H. The Entitlement Receipt Date under the Option Agreement occurred on August 7, 2003.

I. Pursuant to Section 3.1 of the Option Agreement, the Option Expiration Date under the Option Agreement is the earlier of (i) ninety (90) days following the Entitlement Receipt Date, or (ii) the second (2nd) anniversary of the date of the Option Agreement, subject to extension under certain circumstances described in Section 3.1 of the Option Agreement.

J. Pursuant to the terms of Section 3.1 of the Option Agreement, the Option Expiration Date has previously been extended to December 5, 2003, and there are no further unexercised extensions of the Option Expiration Date available under the Option Agreement.

K. New Lessees now desire to obtain a further extension of the Option Expiration Date under the Option Agreement in order to provide New Lessees with additional time to complete the financing for the Restated Leases, and, in consideration of the terms and provisions of this Amendment, County is willing to grant the extension described in this Amendment.

L. The parties also desire to modify the Restated Leases in certain respects.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County, Former Lessee and New Lessees agree as follows:

1. Recitals/Defined Terms. Each party hereby confirms the truth and accuracy of the Recitals set forth above and agrees to be bound thereby. All capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given such terms in the Option Agreement.

2. Assignment and Assumption of Option Agreement. Former Lessee hereby assigns and transfers to New Lessees, on a joint basis, all of Former Lessee's right, title and interest as Lessee in, to and under the Option Agreement. New Lessees hereby accept such assignment, and jointly and severally assume and agree to be bound by and to perform all of the covenants, agreements, conditions, obligations and liabilities of or applicable to the Lessee under the Option Agreement, as amended by this Amendment. County hereby consents to such assignment and assumption. The foregoing assignment and consent shall not operate to release or relieve Former Lessee of any obligations or liabilities under the Option Agreement.

3. Extension of Option Expiration Date. The Option Expiration Date under the Option Agreement is hereby extended to February 5, 2004 in order to provide New Lessees with additional time to complete the financing for the Restated Leases. New Lessees agree to use their best diligent efforts to complete the financing for the Restated Leases on or before February 5, 2004. If despite such best diligent efforts New Lessees are unable to complete the financing

for the Restated Leases by February 5, 2004, and if, in Director's judgment, New Lessees are continuing to use their best diligent efforts to complete such financing, then Director in the exercise of Director's discretion, shall have the authority, but not the obligation, to grant New Lessees one or more additional extensions of the Option Expiration Date to provide New Lessees with additional time to complete the financing for the Restated Leases; provided, however, in no event shall Director have the authority to extend the Option Exercise Date beyond April 5, 2004. Notwithstanding any contrary provision of the Option Agreement (including, without limitation, Section 3.1 thereof), there shall be no further extension of the Option Expiration Date beyond April 5, 2004, and any terms or provisions of the Option Agreement that might provide, or be construed or interpreted to provide, for any further extension of the Option Expiration Date are hereby deleted from the Option Agreement and shall be of no further force or effect.

4. Joint Exercise of Option. Each of the New Lessees shall be jointly and severally liable for the obligations and liabilities of Lessee under the Option Agreement. As provided in the Option Agreement, the Option shall be exercisable only with respect to both of the Existing Leases and shall not be exercisable with respect to only one of the Existing Leases. The Option shall be exercised jointly by both of the New Lessees in accordance with the terms and provisions of Section 4 of the Option Agreement, and the New Lessees shall be jointly responsible for the satisfaction of the terms and conditions of the proper exercise of the Option. All conditions to such exercise must be satisfied as to both of the Parcel 12 Premises and the Parcel 15 Premises or the Option shall not be exercisable as to either of the Existing Leases. If New Lessees determine to exercise the Option, then Esprit One shall be the Lessee under the Restated Parcel 12 Lease and Esprit Two shall be the Lessee under the Restated Parcel 15 Lease, and each of the Restated Leases shall have the same Effective Date. New Lessees shall be jointly and severally liable to pay the Option Payments set forth in Section 2 of the Option Agreement, the Actual Costs described in Section 8 of the Option Agreement, and, if the Option is properly exercised, the joint Extension Fee described in Section 2.2 of each of the Restated Leases. In addition to the other conditions to the exercise of the Option set forth in the Option Agreement, Guarantors shall be required to deliver to County, in a form acceptable to County, a Guaranty of Lease with respect to each of the Restated Leases pursuant to which Guarantors jointly and severally guaranty each of the New Lessee's obligations under each of the respective Restated Leases.

5. Modifications Regarding Performance of Redevelopment Work. The parties agree and acknowledge that prior to the execution of the Restated Leases, the Restated Leases shall be modified to reflect the following with respect to the performance of the Redevelopment Work on each of the Parcel 12 Premises and the Parcel 15 Premises:

5.1 Each New Lessee shall be obligated to complete only that portion of the Redevelopment Work that is located on the Premises leased under such New Lessee's Restated Lease (i.e., the Parcel 12 Premises for the Restated Parcel 12 Lease and the Parcel 15 Premises for the Restated Parcel 15 Lease).

5.2 Notwithstanding Section 5.1 above, the terms and provisions of the Restated Parcel 15 Lease shall be subject to reversion to the terms and provisions of the Existing Parcel 15 Lease (including, without limitation, expiration of the term on July 31, 2022) pursuant

to the Reversion Amendment described in subsection 5.5.3 of the Restated Parcel 15 Lease if there is a failure in the satisfaction of the construction commencement or completion date conditions set forth in the first sentence of subsection 5.5.1 with respect to either of the Restated Leases (i.e., a failure of one or more of such conditions as to either or both of the Restated Parcel 12 Lease or the Restated Parcel 15 Lease shall cause application of the Reversion Amendment to the Restated Parcel 15 Lease).

5.3 The terms and provisions of the Restated Parcel 12 Lease shall be subject to reversion to the terms and provisions of the Existing Parcel 12 Lease (including, without limitation, expiration of the term on December 31, 2022) pursuant to the Reversion Amendment described in subsection 5.5.3 of the Restated Parcel 12 Lease only if there is a failure in the satisfaction of the construction commencement or completion date conditions set forth in subsection 5.5.1 of the Restated Parcel 12 Lease as to the Redevelopment Work to be constructed on the Parcel 12 Premises (i.e., a failure of the conditions with regard to only the Parcel 15 Premises shall not cause the application of the Reversion Amendment to the Restated Parcel 12 Lease).

5.4 If pursuant to Sections 5.2 and 5.3 above both the Parcel 12 Restated Lease and the Parcel 15 Restated Lease revert to the terms and provisions of the respective Existing Leases in accordance with the Reversion Amendments, then New Lessees' obligation to pay all Extension Payments that were due and payable under Section 2.2 of each of the Restated Leases prior to the execution of the Reversion Amendment shall remain in effect, and all previously paid Option Payments, Additional Extension Fee Down Payment and Extension Payments shall be non-refundable. In such case New Lessees shall have no obligation to make further Extension Payments that would have otherwise been due and payable after the execution of the Reversion Amendment.

5.5 If the terms and provisions of only the Parcel 15 Restated Lease (and not the Parcel 12 Restated Lease) revert as provided in Section 5.2 above, then the obligation of New Lessees to pay the full Extension Fee, including the obligation to make all remaining unpaid Extension Payments, shall remain in full force and effect notwithstanding the reversion of the Restated Parcel 15 Lease.

6. Other Modifications to Restated Leases. The parties agree that prior to the execution of the Restated Leases, the Restated Leases shall also be modified as follows:

6.1 New Extended Expiration Date. The Extended Expiration Date set forth in Section 1 of the Option Agreement is changed from June 30, 2060 to July 31, 2061, and Section 2.1 of each of the Restated Leases shall be modified to reflect such change.

6.2 Maintenance Deficiencies. A new Section 10.9 shall be added to each of the Restated Leases to read as follows:

"10.9 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above pertaining to the Improvements

constructed by Lessee on and after the Effective Date, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.9), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars (\$100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible. For purposes of determining the number of items of deficiency set forth in a deficiency notice received from the County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.9 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building).

If a cited deficiency is not health or safety related and does not otherwise constitute an emergency, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Lessee's contest is made on a reasonable and good faith basis, then the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that either Director denies Lessee's contest or that Director has determined not to consider such contest.

The One Hundred Dollars (\$100) per diem amount set forth in this Section 10.9 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.9 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts."

6.3 Controlled Prices. A new Section 15.21 shall be added to each of the Restated Leases to read as follows:

“15.21 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.”

6.4 Water Taxi Docking Location. A new Section 15.21 shall be added to the Parcel 12 Restated Lease to read as follows:

“15.22 Water Taxi Docking Location. At County’s request Lessee shall make available for use by County, or its designees, at no charge, a docking area for use by a water taxi serving the Marina or portions thereof. The water taxi docking area shall be in a location approved by County at the building platform of the boaters’ facility building nearest the main channel. The obligation of Lessee to provide the water taxi docking area shall not commence until after the earlier of (i) forty-two (42) months after the Effective Date, or (ii) the date of the funding of Lessee’s construction loan take-out financing. The rights of the County, or its designee, under this Section 15.22 shall include a right of access to and from the water taxi docking area in favor of County, its designees, and water taxi patrons. Lessee shall be responsible, at its cost, for construction, alteration, maintenance and repair of the water taxi docking area, and all pathways of access to and from the water taxi docking area, in conformity with all requirements of this Lease, including without limitation, compliance with all Applicable Laws (including without limitation, ADA) in effect from time to time. Lessee shall not be responsible for providing security for the operation of the water taxi docking area. The operation of the water taxi docking area shall be subject to such security and operation procedures and regulations as County may reasonably prescribe from time to time.”

7. Notices. As provided in Section 9.3 of the Option Agreement, all notices required or permitted to be given under the Option Agreement shall continue to be given in accordance with the terms and provisions of Section 15.10 of the Restated Leases, except as follows:

7.1 Notices to Lessee. All notices by County to Lessee under the Option Agreement shall be sent jointly to both of the New Lessees, to the following address:

Esprit One LLC and Esprit Two LLC
c/o Douglas R. Ring
11377 West Olympic Blvd.
Los Angeles, California 90064-1683
Phone: (310) 312-3772
Fax: (310) 312-3100

7.2 Notices from Lessee. All notices, elections, exercises, determinations, submittals, approvals, consents and other actions permitted or required under the Option Agreement by Lessee shall be sent, made or submitted jointly from both of the New Lessees, and no such notice, election, exercise, determination, submittal, approval, consent or other action shall be effective unless it is sent, made or submitted in such manner. No separate, inconsistent, or conflicting notices, elections, determinations, submittals, approvals, consents or other actions sent, made or submitted by the New Lessees, or one of them, shall be effective.

8. County Costs. Lessee's reimbursement obligations under Section 8 of the Option Agreement shall include the Actual Costs (as defined in the Restated Leases) incurred by County in the preparation, review, negotiation and documentation of this Amendment.

9. Miscellaneous.

9.1 Time is of the Essence. Time is of the essence of this Amendment, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

9.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Amendment shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Amendment, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Amendment be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

9.3 Captions. The captions contained in this Amendment are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Amendment.

9.4 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Amendment, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, reasonable attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

9.5 No Assignment. New Lessees shall have no right to assign or transfer its rights or obligations under this Amendment to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute

discretion.

9.6 Entire Agreement. This Amendment sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any and all agreements, understandings and representations made prior hereto with respect to such matters. This Amendment may be modified only in writing duly signed, executed and delivered by the parties.

9.7 Joint Effort. Preparation of this Amendment has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

9.8 Applicable Law. This Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.9 Counterparts. This Amendment may be signed in any number of counterparts. Each counterpart shall represent an original of this Amendment and all such counterparts shall collectively constitute one fully-executed document.

9.10 Successors and Assigns. Subject to Section 9.5 above, the rights and obligations of the parties under this Amendment shall be binding upon the parties' respective successors and assigns.

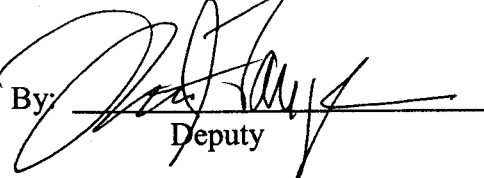
9.11 Partial Invalidity. If any term, provision or condition contained in this Amendment shall, to any extent, be invalid or unenforceable, the remainder of this Amendment, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Amendment shall be valid and enforceable to the fullest extent possible permitted by law.

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first set forth above.

APPROVED AS TO FORM:

THE COUNTY OF LOS ANGELES

LLOYD W. PELLMAN
COUNTY COUNSEL

By: 
Deputy

By: _____
Chair, Board of Supervisors

SIGNATURES CONTINUED ON NEXT PAGE

MARINA TWO HOLDING PARTNERSHIP,
a California limited partnership

By: DR15 Company, LLC, a California limited
liability company, its general partner

By: 

Douglas R. Ring, Manager

ESPRIT ONE LLC, a California limited liability
company

By: 

Name: Douglas R. Ring

Its: Manager

ESPRIT TWO LLC, a California limited liability
company

By: 

Name: Douglas R. Ring

Its: Manager

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the Board of
Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

ORIGINAL SIGNED
By: _____